

1 THE HONORABLE LAUREN KING
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

8 ERIC HORTON, individually and on behalf of
9 all others similarly situated,

10 Plaintiff,

11 v.

12 AMERICOOL HEATING & A/C, L.L.C. d/b/a
13 AMERICOOL HEATING & AIR CONDITIONING,
14 a Washington Limited Liability Company;
15 LINCOLN ANDERSON, individually and on
16 behalf of the marital community comprised
17 of LINCOLN ANDERSON and TAMARA
18 ANDERSON; NORMAN UPSON, individually
19 and on behalf of the marital community
comprised of NORMAN UPSON and MELISSA
UPSON,

Defendants.

Case No. 2:22-cv-01838-LK

**STIPULATION AND ORDER TO DISMISS
PLAINTIFF'S SECOND CLAIM FOR RELIEF**

**NOTED FOR CONSIDERATION:
February 17, 2023**

21 I. STIPULATION

22 In the second claim for relief set forth in his complaint, Dkt. 1-1, Plaintiff Eric Horton
23 alleges Defendants violated the provisions of RCW 49.12.020 and WAC 296-126-092(1) & (2),
24 which require employers to provide meal breaks to employees.

25 In their answer to Plaintiff's complaint, Defendants have asserted an affirmative defense
26 based on RCW 49.12.187, which provides in relevant part that "rules adopted under this

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1 chapter regarding appropriate . . . meal periods as applied to employees in the construction
2 trades may be superseded by a collective bargaining agreement negotiated under the national
3 labor relations act, 29 U.S.C. Sec. 151 *et seq.*, if the terms of the collective bargaining
4 agreement covering such employees specifically require . . . meal periods and prescribe
5 requirements concerning those . . . meal periods.” Dkt. 12 at 29. Defendants maintain that
6 given RCW 49.12.187 and the application to Plaintiff of a collective bargaining agreement
7 between the Inland Northwest Sheet Metal Contractors Association and the Northwest
8 Regional Council of SMART Local Union 55, Plaintiff’s second claim for relief is preempted by
9 Section 301 of the Labor Management Relations Act, 29 U.S.C. Sec. 141 *et seq.* (“LMRA”). Dkt. 1
10 at 5-7.

11 Plaintiff concedes that his second claim for relief is preempted under Section 301 of the
12 LMRA. Plaintiff also concedes that as a result of this, he cannot pursue damages under his
13 fourth and sixth claims for relief that are based on the second claim for relief.

14 Plaintiff also asserts claims for off-the-clock work, including off-the-clock work
15 performed as a result of being clocked out for a meal break not taken. Defendants maintain
16 that these claims are also preempted under Section 301 of the LMRA, but Plaintiff disagrees.
17 Defendants intend to file a motion on the issue.

18 In light of the foregoing, the parties agree that good cause exists to dismiss Plaintiff’s
19 second claim for relief as preempted under Section 301 of the LMRA and to prohibit Plaintiff
20 from pursuing damages under the fourth and sixth claims for relief that are based on the
21 second claim for relief. See Fed. R. Civ. P. 41(a)(1)(ii) (providing for stipulation by dismissal
22 signed by all parties).

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25 STIPULATED TO AND DATED this 1st day of May, 2023.

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27 TERRELL MARSHALL LAW GROUP PLLC
STIPULATION AND ORDER TO DISMISS PLAINTIFF’S
SECOND CLAIM FOR RELIEF
Case No. 2:22-cv-01838-LK

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II. ORDER

Plaintiff's second claim for relief, which alleges a violation of Washington's meal break laws, is DISMISSED as preempted under Section 301 of the Labor Management Relations Act, and Plaintiff is PROHIBITED from pursuing damages under the fourth and sixth claims for relief that are based on the second claim for relief. The Court RESERVES RULING on the parties' dispute over whether Plaintiff may pursue unpaid wage claims for off-the-clock performed as a result of being clocked out for a meal break not taken.

IT IS SO ORDERED.

DATED this 1st day of May, 2023.

Barbara Rothstein

Barbara Jacobs Rothstein
U.S. District Court Judge

Presented by:

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